

REMARKS

Claims 35, 37-51 remain in the application. This Preliminary Amendment is in response to the Office Action of October 20, 2004, the telephone interview of January 26, 2005 wherein the amendments proposed in the Amendment After Rejection (not entered) were discussed and the Advisory Action dated January 28, 2005. In addition to the proposed amendments set forth the Amendment After Final Rejection (not entered) the Applicants have made further amendments to the claims including those suggested by the Examiner, namely, Claims 35, 39, 40, 47, 48, and 49.

Request for Interference

As will be shown hereafter, at least some of the claims in this application are allowable. Applicants have previously requested that an interference be declared between the claims of this application and United States Patent No. 6,340,369 to Ferree. It is again requested that the claims of this application be put into interference with United States Patent No. 6,340,369 to Ferree, for the reasons previously requested.

Claim Rejections Under 35 U.S.C. § 112, Paragraph 1

In paragraph 6, the Examiner rejected Claim 35 for lack of antecedent basis. Claim 35(e) has been amended to overcome this rejection.

In paragraphs 7 and 8, the Examiner suggested amending Claim 35 to include “a method of implanting human intervertebral disc cells into a patient with damaged or diseased intervertebral disc tissue ...”. This amendment to Claims 35 and 39 has been made.

In the Advisory Action dated January 28, 2005, the Examiner indicted that the objection and rejection of Claim 35 would be obviated by the proposed amendment.

Claim Rejections Under 35 U.S.C. § 112, Paragraph 2

In paragraph 9, Claims 42-43, 46 and 47-51 are rejected under 35 U.S.C. § 112, second paragraph as being indefinite.

As suggested by the Examiner, amendments to those claims have been made. Specifically, Claim 47 has been amended to provide proper antecedent basis for “said disc cells” in step (a). In addition, Claims 39, 41 and 48 have been amended to provide consistency of the

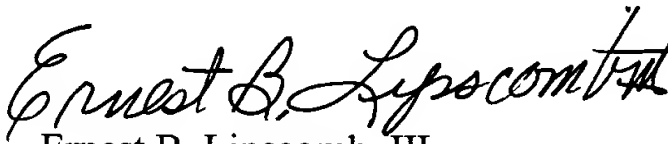
Appl. No.: 09/560,288
Filed: April 27, 2000
Amendment Dated February 8, 2005

description "live human intervertebral disc cells". In addition, Claim 46 has been amended as suggested by the Examiner.

Applicants believe that the above amendments overcome all of the remaining rejections but would welcome any additional comments from the Examiner. There being no further outstanding matters in this case, it is respectfully submitted that the application is ready for allowance and such action is earnestly solicited. If there are any further outstanding matters to be resolved, the Examiner is respectfully requested to contact the undersigned attorney at the phone number listed.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit Account No. 16-0605.

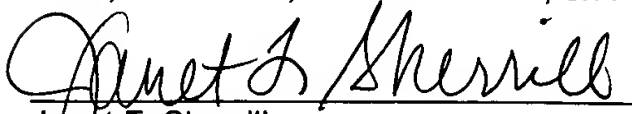
Respectfully submitted,


Ernest B. Lipscomb, III
Registration No. 24,733

Customer No. 00826
ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000
Tel Charlotte Office (704) 444-1000
Fax Charlotte Office (704) 444-1111

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450, on February 8, 2005.


Janet F. Sherrill